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August 17, 2023

The Honorable Livia Shmavonian
Director, Made in America Office
Office of Management and Budget
725 17th St, N.W.
Washington, D.C. 20503

RE: Build America, Buy America Programmatic Waiver for Projects that have
Completed Feasibility Studies or Initiated Design Planning

Dear Director Shmavonian,

We write to urge you to waive Build America, Buy America (BABA) requirements for projects that completed feasibility studies through the Bureau of Reclamation's (Reclamation) Title XVI Water Reclamation and Reuse Grants Program prior to May 14, 2022, the effective date of BABA requirements.

WateReuse is a not-for-profit trade association for water utilities, businesses, non-profit organizations, and research entities that advocate for policies and programs to advance water recycling. WateReuse and its state and regional sections represent nearly 250 water utilities serving over 60 million customers, and over 200 businesses and organizations across the country. WateReuse and our members were deeply involved in the development and enactment of the Infrastructure Investment and Jobs Act (IIJA). We worked closely with Congress to ensure that the legislation supports water recycling as a resiliency tool.

Entities that completed feasibility studies for the Title XVI program prior to May 14, 2022 did so with no knowledge that BABA requirements would apply to their Title XVI projects. Without such knowledge, they did not have the opportunity to plan for such requirements and may have to redo their feasibility studies, reevaluate design alternatives and potentially redesign elements of their projects, investigate potential domestic products, revise engineering drawings and bid specifications, and resubmit plans and specifications for state or local approval, thereby delaying the initiation of construction, and increasing project costs and schedule delays substantially.

A simple one-year or multi-year extension of the BABA compliance deadline will not be sufficient to mitigate these impacts. Instead, WateReuse requests that the Administration waive BABA requirements for Title XVI projects that completed feasibility studies prior to May 14, 2022.

In developing these recommendations, we surveyed our member entities who have completed Title XVI feasibility studies, and asked them for feedback on how a one-year or multi-year BABA compliance extension would impact their projects as compared to a full waiver of BABA requirements. The following is a summary of the feedback that we received in response to our request for information.

Delays and Project Costs

A one-to-two-year long compliance extension would not adequately account for the labor and design costs associated with project development prior to any program funding award. Entities undertake a large amount of planning work to submit a Title XVI project feasibility study prior to applying for funding. Those feasibility studies then need to be approved by Reclamation before an entity can apply for funding. To now require these projects to comply with BABA requirements may necessitate significant plan restructuring, leading to delays and increased costs in implementation and construction.

Every survey respondent estimated that their project costs under BABA requirements would increase relative to the costs identified and planned for in their approved TXVI feasibility studies. Member estimates of the cost of restarting planning ranged from \$350,000 to \$1,700,000, though some simply stated that costs would increase substantially without providing a specific number. These figures do not reflect inflationary costs associated with delaying pre-construction and construction activities. Those costs would be borne on top of the planning costs outlined above. In addition to increasing costs, requiring these entities to repeat the feasibility study process and restart design planning would lead to significant delays in implementation. One respondent noted: "Rerunning the pilot study alone would take one year. If a complete waiver is not granted and the project must re-evaluate treatment processes before beginning final design, it could delay the project by 2 years or more."

Numerous respondents stated that they would need to reconsider moving forward with the Title XVI program in the absence of a waiver. One respondent detailed the anticipated impacts of withdrawing from the program, including returning state grant funds, the community continuing to rely on unsustainable surface water supplies, and a loss of jobs from construction and operations of the project. Another respondent detailed the impact that requiring entities with approved feasibility studies to now comply with BABA would have on disadvantaged communities: "Because the project benefits a small, disadvantaged community, it is particularly sensitive to cost increases that will impact local ratepayers. Given that a one-year compliance waiver could cost \$1.7 million to reassess the project's advanced treatment train and brine minimization system to determine whether or not it would even be feasible to continue the project, our elected officials may have to cancel the project to avoid burdening the small, disadvantaged community with these additional costs for an uncertain outcome."

One-to-Two-Years is an Insufficient Time Frame for Restarting Project Planning

Survey respondents noted that given the complexity of the treatment projects that they are implementing, a one-to-two-year extension would not cover the amount of time that it would take to complete a new feasibility study, let alone find components that meet BABA requirements and get



approval for them. In some cases, the development of feasibility studies has taken multiple years. Entities would also need sufficient time to ensure that BABA compliant components meet the same level of treatment and treatment standards as their previously approved project. As one member put it: "Given the lack of clear information from manufacturers of advanced treatment processes and pumps and the time needed to reassess the viability of this project with potentially different treatment equipment, it would not be possible to adapt the project to comply with BABA in a year's time."

To safely and reliably treat recycled water to meet rigorous standards, water reuse and recycling facilities utilize certain equipment and advanced water treatment technologies that include products not able to be sourced in the United States, with no equally efficient and effective alternatives. Respondents stated that because they could not make the project compliant with BABA in these timeframes that they would likely abandon the use of Title XVI funding because they could no longer qualify.

Since enactment of the Infrastructure Investment and Jobs Act, the U.S. Environmental Protection Agency (EPA) waived BABA requirements for projects that initiated planning through its three largest water infrastructure programs—the Clean Water State Revolving Fund Program, Drinking Water State Revolving Fund Program, and Water Infrastructure Finance and Innovation Act (WIFIA) Program—prior to May 14, 2022. Rather than simply extending the compliance deadline for these projects, EPA recognized that the initiation of planning activities necessitated waiving compliance requirements. We urge you to take the same approach for projects that have completed feasibility studies as part of the Bureau of Reclamation's Title XVI Water Reclamation and Reuse Grants Program. Thank you for considering our views.

Sincerely,



Patricia L. Sinicropi, J.D.
Executive Director

CC: The Honorable Camille Calimlim Touton, Commissioner, Bureau of Reclamation, U.S.
Department of Interior

The Honorable Michael Brain, Acting Assistant Secretary for Water and Science, U.S.
Department of Interior

